DOCUMENT RESUME

ED 102 210 95 TM 004 511

AUTHOR	Read, Peter B.
TITLE	On the Confidentiality of Student Test Scores. Report No. 32.
INSTITUTION	ERIC Clearinghouse on Tests, Measurement, and Evaluation, Princeton, N.J.
SPONS AGENCY	National Inst. of Education (DHEW), Washington, D.C. Office of Dissemination and Resources.
REPORT NO	ERIC-TM-32
PUB DATE	Dec 74
CONTRACT	OEC-0-70-3797(519)
NOTE	32p.
EDRS PRICE	MF-$0.76 HC-$1.95 PLUS POSTAGE
DESCRIPTORS	Civil Liberties; *Confidentiality; Confidential Records; Court Litigation; Data Collection; Educational Accountability; Educational Legislation; Equal Protection; *Guidelines; Institutions; Legal Problems; Parent School Relationship; Policy; Record Keeping; *Student Records; Student School Relationship; *Testing; Testing Problems; Test Interpretation; *Test Results

ABSTRACT

A discussion of the limited meaning of test scores, testing as an invasion of privacy, the abuse of test scores as confidential information and privileged communication, recording and storing of test results, access to test scores, and the demand for accountability forms the basis for recommendations for the release of individual and group test scores. These suggestions are consonant with recommendations of various professional organizations composed of psychologists, counselors, and educators; the guidelines prepared by a conference sponsored by the Russell Sage Foundation in 1970; and numerous court cases which have established legal precedents on the release of test data or confidential information. (EH)

BEST COPY AVAILABLE

ED102210

On the Confidentiality of Student Test Scores[1]

by
Peter B. Read

ERIC/TM Report 32

December 1974

TM 004 511

[1] The report upon which this article is based was funded by the ERIC Clearinghouse on Tests, Measurement and Evaluation. The Clearinghouse operates under contract with the National Institute of Education, U.S. Department of Health, Education and Welfare. Contractors undertaking such projects under government sponsorship are encouraged to express freely their judgment in professional and technical matters. Points of view or opinions do not therefore represent official National Institute of Education position or policy.

BEST COPY AVAILABLE

ON THE CONFIDENTIALITY OF STUDENT TEST SCORES

Peter E. Head
Graduate School
City University of New York

INTRODUCTION

In recent years, the growth in the number of techniques to evaluate student abilities, an expansion of computerized data storage facilities, and the increased interest in evaluating school programs have led to the accumulation of vast quantities of information on students. Serious questions have been raised concerning what types of information should be collected, how this information should be recorded and stored, and who should have access to it.

Initially, there existed little in the way of legal precedent or codified policies to guide educators in the management of these records. When they received apparently legitimate requests for information on students from third parties, institutions were caught between the demands of their students for confidentiality and the concerns of their staff over liability. The professional organizations of psychologists, counselors, and educators (APA, APGA, NEA, AACRAO) responded to this dilemma by developing record-keeping policies for inclusion in their ethical standards.

During the 1960s, there were several important court cases relating to student records, and in the Spring of 1969, the Russell Sage

BEST COPY AVAILABLE

Foundation sponsored a conference of educators and legal experts to examine issues related to the collection, maintenance, and dissemination of information on students. This conference published its recommendations, Guidelines for the Collection, Maintenance and Dissemination of Pupil Records (Russell Sage Foundation, 1970), and the literature on student records since 1970 indicates that for many institutions this document has served as a sound basis for the formulation and implementation of record-keeping procedures.

Student test scores have received renewed importance as part of a student's record, primarily because of the growing concern for accountability. Committees and public agencies have indicated a growing desire to evaluate experimental educational programs and to develop evidence on the performance of their schools. This desire to judge the contribution of various school efforts to student performance leads inevitably to the selection and administration of appropriate tests, which leads just as inevitably to the recording of various scores on student records. Frequently these individual scores are then accumulated to provide performance data on classes, grades, schools, and districts.

The release of student test scores poses two sets of problems relating to the confidentiality of student information. When an individual student's score is revealed to a parent, school staff member, or outside party, one must question the degree to which such information is essentially confidential.

BEST COPY AVAILABLE

consent to certain exceptions to this confidentiality. In all cases, the student should be informed that total confidentiality is not always possible. Unless the information exists as part of a privileged communication (see next section), courts may subpoena records or existing state or county laws may permit certain outside agencies to examine records. For example, in New Jersey, pupil records may be inspected by representatives of the Selective Service, FBI, and U.S. Army and Navy, subject to the approval of local board of education.

The extent to which the confidentiality of student information can be maintained depends upon three sets of factors:

1. Existing statutes protecting information as part of a privileged communication (see next section)
2. Adequate procedures for the safe storage of recorded information, insuring that there is no unauthorized access
3. Adherence of school personnel and researchers to the principle of confidentiality and to the appropriate ethical standards for their profession (APA, APGA, AACRAO)

Previous research on actual practices in the release of student information (Goslin and Bordier, 1969, Vane, 1971, Boyd, 1973) has indicated that in most instances, school personnel readily accede to requests for information on students, particularly test data, by outside agencies. Frequently it is the students and parents themselves who have the most limited access to information (Goslin and Bordier). This apparently "loose"

BEST COPY AVAILABLE

approach to the release of student information runs counter to the growing concern for privacy and to existing professional ethical standards. The consequences for unauthorized disclosure of student information are varied and will probably be applied with increasing frequency. They include disciplinary action by professional organizations; removal of state license or certification; and civil actions or suits by client involved.

The question is often raised as to who actually owns a test record. Legally the student owns his test protocol but it is the psychologist or educator who owns any analysis and comments concerning the student's responses. Thus, a unique relationship between the test agent and student is established. If the student is to understand the meaning of his scored test, he requires the competent professional interpretation which is not legally in his possession. At the same time, the student surrenders his test responses to the test agent with the understanding that the information will be used only for its stated purposes. Both specific responses and a total test score are viewed by the student as confidential communications, and existing professional ethical standards indicate that they should be treated as such by those receiving the scores.

IV. TEST SCORES AS PRIVILEGED COMMUNICATIONS

Unlike privacy and confidentiality, which to date have ambiguous legal boundaries, the area of privileged communications exists

BEST COPY AVAILABLE

solely under the umbrella of state statutes. These statutes assert the client's right to prevent information from being revealed in legal proceedings. Though by common law the attorney-client relationship is universally considered one of privileged communications, the relationship of students to school psychologists, counselors, and other school staff members has not received strong legal support. As of 1969, thirty-four states defined the psychologist-client (student) relationship as one involving privileged communication while only three (Michigan, Indiana, and Wisconsin) had established privileged communication between students and counselors. Even existing statutes frequently state exceptions to the protection of information, as in the communication of criminal intent or when the mental condition of the client is in question. Courts have resisted developing statutes which would establish the relationship of school staff to students as one involving privileged communications. It is generally agreed that such protection of confidential communications is required only if it preserves the integrity of the individual or a government and only if the relationship requires full trust (for example, therapist-client, husband-wife). In order for the latter condition to apply, legal experts customarily apply four criteria (Shah, 1969):

1. The original communication was indeed confidential.

BEST COPY AVAILABLE

2. Confidentiality is essential to maintain the relationship.

3. The injury of disclosure is greater than any benefit.

4. It is desirable for society to foster the relationship.

In order for test scores and other student information maintained in the files of school personnel other than psychologists to be protected from subpoena, these four criteria for a privileged communication must be met. It is doubtful that new statutes will be developed to extend the right of privileged communication to the relationship of students to school personnel other than licensed psychologists.

Two areas of access to student records and test scores have been established legally—the right of parents (or guardians) and the right of students themselves to view school records. In two court cases during the early 1960s (Van Allen v. McleanN.Y., 1961 and Johnson v. Bd. of Education, City of New York, 1961), the court upheld the right of parents to examine all their children's records. In respect to test scores, the Van Allen v. McLeary decision was particularly explicit in stating that "raw numerical data such as achievement test scores and I.Q.'s should be presented to parents with appropriate professional interpretation." More than twenty states developed statutes providing parental access to student information. On November 20, 1974 a national privacy law went into effect as part of the Elementary

BEST COPY AVAILABLE

and Secondary Education Act (Section 438, Title V, Educational Amendments, 1974). This law states that no federal funds will be available to any educational institution that refuses the parents of a student, or the student himself if he is over 18, the right "to inspect and review any and all official records, files and data directly related to" the student. Parents now have an unalienable right to all pertinent information concerning any of their children who are under 18 years of age.

A student's right to view his own records and admissions materials was upheld in the Bates College case (Ervin v. Bronson, Maine, 1974) and, as already noted, the new privacy amendment to the Elementary and Secondary Education Act allows students over 18 to view their records. However, there still exists ambiguity concerning the rights of students under 18. The Russell Sage Foundation Guidelines recommends that these students be given access to their official academic record (which includes grades and standardized achievement scores), but parental permission is required for them to see other information such as verified scores on standardized intelligence tests, aptitude tests, and personality inventories. Clearly, parental access to test scores (and all student records) has received stronger legal support and is provided more frequently than student access to the same materials.

A major criticism of Guidelines (Tatlebaum and Gaslin, 1971) has concerned the failure to define this parent-child relationship

as it affects the collection of and access to student information. For example, what policy should apply if a student under 21 years of age wishes to view parts of his record, but the parent refuses permission? This problem has not been resolved.

Though the new federal privacy law now provides a solid legal basis for parental and student (over 18) access to school records at least three important objections have been raised to the regulation, particularly by colleges and universities:

1. Current student records contain information obtained prior to enactment of the law. How should these materials be treated?

2. College and university files frequently contain letters of recommendation written as confidential communications to the institution from third parties. Student access in these cases would appear to violate this initial confidentiality.

3. The new law vaguely confers access to "all official records, files, and data directly related to" students. This statement appears to grant access to the files and notes of all school personnel, including perhaps material which was never intended for parents or students to see.

Solutions to these difficulties can only be resolved through reasonable interpretations and implementations of the new law. Despite these apprehensions, many educators are hopeful that the new law will lead to long-needed evaluation of the materials which educational institutions maintain in student files.

In respect to this claim, these evaluations should include

[illegible]

[illegible]

a. [illegible]

(1) [illegible]

(2) [illegible]

(3) [illegible]

b. [illegible]

(1) [illegible]

(2) [illegible]

(3) [illegible]

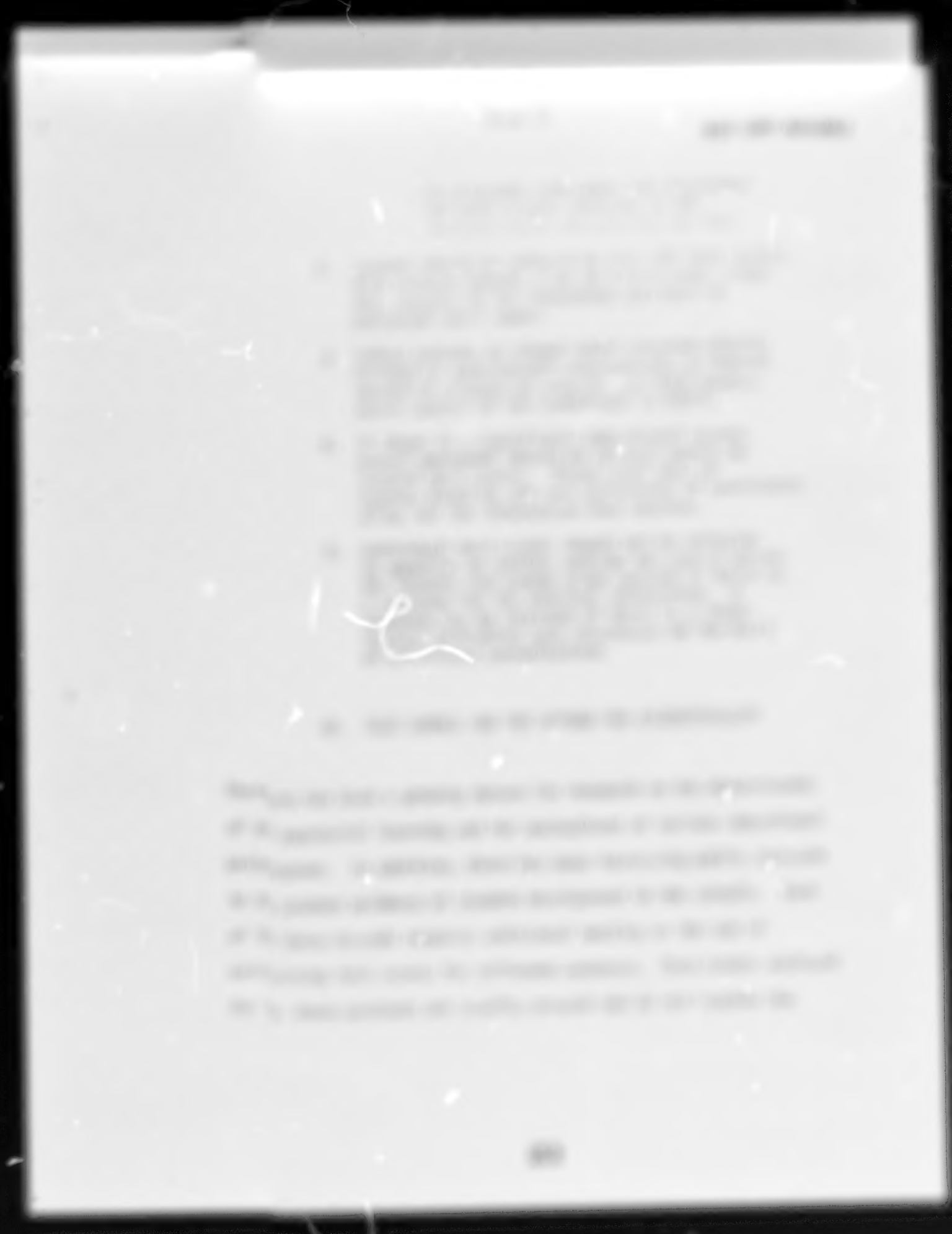
(4) [illegible]

(5) [illegible]

(6) [illegible]

[illegible]

[illegible] [illegible] [illegible] [



BEST COPY AVAILABLE

individual students. All test results then are recorded with only the identifying number while a separate record of the student's number and identity is maintained for future use if needed. A more elaborate "link file" method has been developed and implemented by the American Council on Education for its data bank and is recommended for large-scale longitudinal research when the budget can support the process. (For a description of this procedure, see Boruch, 1969).

Different solutions have been proposed to counteract misinterpretations resulting from the public release of group test scores. Some educators argue that since the meaning of the scores themselves is problematical, they should not be released at all. Others believe that since many interpretations of results are possible, the public should be presented with only the raw scores and be allowed to draw its own conclusions. A third position would have all scores presented with an accompanying description of the tests involved and a reasonable professional interpretation of the results. For those who actually possess performance data, the choice is a difficult one, and the literature reviewed indicates no clearly superior alternative. Public demand for information on the performance of its schools makes it virtually impossible to adopt the stance of witholding information. Assuming that individual student anonymity is maintained, the issue becomes not one of confidentiality but what are the conditions of release. Is there apt to be greater misuse and misinterpretation of information when

BEST COPY AVAILABLE

no analysis accompanies scores or when some professional commentary is provided? Few question the fact that presenting raw achievement scores by school or district can be stigmatizing for student groups and result in inflammatory accusations of who is to blame for poor performance. Alternatively, a published interpretation accompanying results could be inaccurate or unfairly detract from important findings.

After reviewing the published debate on the issue of how to publicize accountability findings, the author is persuaded by what could be called the "logical release" of test score information (Jacobs, 1973). This position involves not only the presentation of relevant descriptive and analytical materials with all test results but askes that such results appear within an ongoing flow of information from the school to its community. Confusion and the misconception of test results can best be prevented though a continual communication process which should include public meetings and media releases which incorporate community-school profiles. In this context, the release of test scores is far less likely to produce misinterpretations. Assuming that the recommendations for administration, recording, and storage of individual test scores suggested earlier would be adhered to, the following recommendations are made concerning the release of group test scores:

BEST COPY AVAILABLE

RECOMMENDATIONS FOR THE RELEASE OF GROUP TEST SCORES

1. When individual scores are accumulated to form group data, every effort should be made to protect the anonymity of individual respondents. If the aggregate data is recorded on computer tapes, any identifying student information should be removed. If longitudinal data is required, a system of identifying numbers should be developed so that a student's identity and associated number are recorded apart from the data with identifying numbers.

2. Efforts should be made to acquaint all school personnel with the justification for accumulating group scores and the condition for their release.

3. Efforts should be made on a continuing basis to inform the school community concerning the nature of the school's educational program, the types of tests to be administered, the conditions under which scores will be released, and what can be reasonably concluded from published results.

4. Group test scores should be released to the public only by an authorized agent of the board of education which initiated the testing program.

5. Group test scores should not be released to other individuals or groups for research purposes without the consent of the board of education.

6. The public release of group test score information should be accompanied by a competent interpretive statement which minimally would include:

    . A description of the purpose for which the test was given

    . A description of the type of test employed, with examples of test items where appropriate

    . A description of the student population which was tested

BEST COPY AVAILABLE

- Wherever appropriate, a comparison of the results with national group norms

- An accounting of the various factors which influence test results. This statement should caution against attributing the blame for group differences incorrectly (specific school staff) or prematurely (before long-range results make the findings certain)

- Where trends over time are important, a presentation of previous results to provide appropriate comparisons or establish a relevant standard

American Personnel and Guidance Association (APGA). Ethical standards. Personnel and Guidance Journal, 1961, 39, 222-230.

American Psychological Association. Testing and public policy. Special issue of American Psychologist, 1965, 20, 857-993.

Ethical standards of psychologists. American Psychologist, 1963, 17, 357-361.

Anastasi, A. Psychology, psychologists and psychological testing. American Psychologist, 1967, 22, 297-306.

Clay, R. Pupils' rights and the upper taxation. Elementary School Journal, 1972, 74, 2-5.

Coruch, Robert F. Educational research and the confidentiality of data. ACE Research Report 4, 1969.

Boyd, Robert E. et. al. Counselor and client confidentiality. Counselor Education and Supervision, 1973, 12, 216-227.

Clark, P. The use, misuse and abuse of tests. Report of first Annual Meeting of New England Association for Measurement and Evaluation in Guidance, March 1970.

Frymier, Jack R. Who is accountable to whom and for what? ASCD Annual Meeting, February 1973.

Goslin, David A. and Gardner, E. Record keeping in elementary and secondary schools. In S. Wheeler (ed.) On records: files and dossiers in American life. New York: Russell Sage Foundation, 1969.

Jacobs, James N. Releasing test scores: urgent or unthinkable. Paper presented February 24, 1973 at meeting of American Association of School Administrators.

Mercer, Jane R. A policy statement on assessment procedures and the rights of children. Harvard Educational Review, 1974, 44, 125-141.

National Education Association. Code of student rights and responsibilities, 1971.

BEST COPY AVAILABLE

Rabinowitz, S. and Katz, Phyllis A. Primary and hierarchical organization. Journal of Educational Psychology, 1980, 72, 413-418.

Research Into Procedures for the Collection, Interpretation and Dissemination of Child Abuse Data. 1978.

Shah, Saleem A. Privileged communications, confidentiality and privacy. Professional Psychology, Summer 1978 - Spring 1980, Vol. 1, 1-6.

Shirey, Wayne A. and Shirey, B. An attorney views and reviews of student information. Prepared for AERA, April, 1972.

Sparks, Richard K. and Stevens, Kenneth. How can you write teachers work standards into your new contract? Here are the things to watch out for. American School Board Journal, 1973, 160, 32-34.

Teitelbaum, Vivian Stewart and Gallie, David K. The Russell Sage rehabilitant: reactions for the field. Personnel and Guidance Journal, 1971, 50, 211-217.

Vann, Julia. What information do school officials responsible for individuals evaluate? Various, 1971.